

CHAPTER 4

Designation



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Chapter 4: Designation

The material in this Chapter presents methods for designating sources, notifying responsible parties, and conducting investigations to identify sources and responsible parties under OPA 90. The material is divided into the following subchapters:

Subchapter	Contains Detailed Information About
TOPs for Designation of Source	<ul style="list-style-type: none">• Guidance needed by FOSCs and SOSCs on designation and corresponding investigative requirements under OPA 90.

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National Pollution Funds Center

U.S. Department
of Transportation

United States
Coast Guard



NPFC INSTRUCTION M5890.3

**Technical Operating
Procedures for
Designation of Source**

**under
The Oil Pollution Act of 1990**

DRAFT - May 20, 1996

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U.S. Department
of Transportation

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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NPFCINST
M5890.3
24 Oct 96

NATIONAL POLLUTION FUNDS CENTER (NPFC) INSTRUCTION M5890.3

Subj: Technical Operating Procedures (TOPs) for Designation of Source under the Oil Pollution Act of 1990

Ref: (a) NPFC Technical Operating Procedures Series Resource Documentation TOPs (NPFCINST 16451-2) and State Access TOPs (NPFCINST 16451-1)

1. PURPOSE. The enclosed Manual has been developed to provide guidance on "designation of source", and the corresponding investigative requirements under the statute. This Manual is intended as internal guidance only, and is not intended to create any right or benefit, substantive or procedural, enforceable by law.
2. ACTION. Federal On-Scene Coordinators (FOSCs), State On-Scene Coordinator (SOCs), and National Pollution Funds Center (NPFC) personnel shall be guided by this Instruction in conducting investigations to identify and designate the source of an oil discharge or the substantial threat of a discharge into the navigable water of the United States, and to subsequently notify associated responsible parties and guarantors.
3. DIRECTIVES AFFECTED. The procedures in this document are supported by the Cost Documentation TOPs and the State Access TOPs. The Cost Documentation TOPs serves as guidance to users operating as or in support of the FOSC. The State Access TOPs provides a mechanism for requesting funding by a State for the immediate removal of a discharge, or the mitigation or prevention of a discharge of oil.
4. CHANGES. The NPFC welcomes your comments regarding changes to this Manual. Please address your remarks to: Director (cm); National Pollution Funds Center (NPFC); U.S. Coast Guard; 4200 Wilson Blvd., Suite 1000; Arlington, Virginia 22203-1804. This document will be reprinted and redistributed, as necessary.
5. DISCUSSION. One of the fundamental objectives of OPA is to "make the polluter pay" for certain costs of oil spills up to established limits of liability and damages. The procedures outlined in this TOPs support this objective. In accordance with these procedures:
 - a. The NPFC is responsible for the designation of source and notification of associated responsible parties and guarantors.
 - (1) Coast Guard FOSCs have also been delegated this authority for use in rare circumstances as outlined in this TOPs.

- (2) Environmental Protection Agency FOSCs have not been delegated this authority; however, they must still determine the source of oil pollution. When the source involves a vessel or facility, they should identify all potential responsible parties, and ascertain their intentions with respect to removing the oil or the threat of the discharge.
- (3) All FOSCs should provide timely information to the NPFC to allow for designation and notification, or to confirm that these actions have already been taken.

DANIEL F. SHEEHAN

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CHAPTER 1 INTRODUCTION AND BACKGROUND

- A. General: Responsible parties (RPs) for a vessel or a facility are liable for removal costs and damages, including interest thereon, resulting from their OPA incident (i.e., oil discharged into, or the substantial thereof to, U.S. surface waters including the Exclusive Economic Zone (EEZ) on or after 19 August 1990). RPs are also responsible for handling claims for such removal costs or damages; if they do not, then they are also liable for the costs incurred by the Fund in handling claims. To begin the claims process, OPA 1014, 33 USC 2714, provides that once an incident becomes known, the source or sources of a discharge or threat shall be designated where possible and appropriate. And, if the designated source is a vessel or a facility, the RP and the guarantor, if known, shall be immediately notified of the designation.

"Designation" is an OPA term of art used in connection with the initiation of the claims process and is more properly aimed at the advertisement of RP responsibility to potential claimants. It frequently overlaps with On Scene Coordinators' (OSCs) need to identify the potential RPs to ascertain their present intentions with respect to removing the oil or its threat. Typically the FOSC will issue administrative orders and letter of Federal Interest (LOFI) to assert the need for positive RP action. However, formal notification of designation, through the process set in a 1014(b) includes a five day period after receipt in which to deny the designation. This will likely not assist OSCs in determining what immediate action needs to be taken to remove the oil.

B. Authorities and Responsibilities.

1. Secretary of Department in which the Coast Guard is Operating. Executive Order 12777 delegated the functions vested in the President by section 1014 of OPA to the Secretary of Department in which the Coast Guard is operating (Department of Transportation).
2. Commandant of the Coast Guard. The Secretary of Transportation delegated those functions to the Commandant of the Coast Guard in 49 CFR Part 1.
3. Chief of the Office of Marine Safety, Security, and Environmental Protection. The Commandant of the Coast Guard redelegated those functions pertaining to designation of source and notification of responsible parties to the Chief of the Office of Marine Safety, Security, and Environmental Protection, and Coast Guard predesignated On-Scene Coordinators.
4. Director, National Pollution Funds Center. The Commandant of the Coast Guard redelegated those functions pertaining to advertising for claims under 1014 (b) to the Director, National Pollution Funds Center. The Chief of the Office of Marine Safety, Security, and Environmental Protection redelegated the functions pertaining to designation of source and notification of responsible parties and guarantors 1014(a) to the Director, National Pollution Funds Center jointly with Coast Guard predesignated On-Scene Coordinators.
5. Coast Guard On-Scene Coordinators. The Chief of the Office of Marine Safety, Security, and Environmental Protection redelegated the functions pertaining to designation of source and notification of responsible parties and guarantors to Coast Guard predesignated on-scene Coordinators jointly with the Director, National Pollution Funds Center.

6. Federal On-Scene Coordinators. The National Contingency Plan requires, "The OSC/Remedial Project Manager (RPM) shall, to the extent practicable, collect pertinent facts about the identification of potentially responsible parties; the nature, amount, and location of the discharged or released materials; the probable direction of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in section 300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare of the United States as discussed in section 300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation."

CHAPTER 2 INVESTIGATIVE CONSIDERATIONS

A. Objectives of the FOSC's Investigation/Fact Gathering.

1. Identify the source of the discharge or substantial threat of discharge.
2. Confirm whether the substance discharged or threatened to be discharged is oil, as defined by OPA.
3. Identify the navigable water into which the oil was discharged or which is threatened by a discharge.
4. Establish the pathway from the source to the navigable water.
5. Determine the occurrence or series of occurrences which resulted in the discharge or substantial threat of discharge.
6. Fully identify the responsible party(ies): the owners and operators of the vessel or facility that was the source of the discharge, as defined in OPA section 1001. Strive to get as much timely information as possible including names, addresses, telephone/telex/fax numbers, resident agent(s) for service of process, those authorized to speak and act for the RP in this situation (particularly where the RP is an organization), how they can be contacted, their tax ID numbers, and the pertinent structure of the organization. Pertinent OPA definitions are:

"(26) 'owner or operator' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;"

"(32) 'responsible party' means the following:

- (A) **VESSELS.** — In the case of a vessel, any person owning, operating, or demise chartering the vessel.
- (B) **ONSHORE FACILITIES.** — In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.
- (C) **OFFSHORE FACILITIES.** — In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U. S. C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U. S. C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.
- (D) **DEEPWATER PORTS.** — In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U. S. C. 1501-1524), the licensee.

(E) (E) PIPELINES. — In the case of a pipeline, any person owning or operating the pipeline."

7. Establish facts to support a determination as to whether the responsible party may have a defense to liability under OPA section 1003 (a). If an RP raises a potential defense or it appears to the FOSC that the OPA incident may involve a defense, the FOSC should contact the NPFC for further guidance. In no case should the FOSC (or other government personnel) make any statements about whether the defense is valid or not; that is a legal conclusion to be made at the appropriate time during the cost recovery/claims/civil penalty process by someone authorized to do so. OPA section 1003(a) states (emphasis added):

"A responsible party is not liable for removal costs or damages under section 1002 if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs, respectively, were **caused solely by**—

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third party other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party —
 - (A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and
 - (B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or
- (4) any combination of paragraphs (1), (2), and (3)."

8. Determine whether exceptions to limits of liability may apply in accordance with OPA section 1004 (c):

"(c) EXCEPTIONS. —

- (1) ACTS OF RESPONSIBLE PARTY. —Subsection (a) does not apply if the incident was proximately caused by—
 - (A) gross negligence or willful misconduct of, or
 - (B) the violation of an applicable Federal safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or person acting pursuant to a contractual relationship with the responsible party.

- (2) **FAILURE OR REFUSAL OF RESPONSIBLE PARTY.** — Subsection (a) does not apply if the responsible party fails or refuses —
- (A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;
 - (B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or
 - (C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U. S. C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U. S. C. 1471 et seq.).
- (3) **OCS FACILITY OR VESSEL.** —Notwithstanding the limitations established under subsection (a) and the defenses of section 1003, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel."

9. Evaluate the possibility of claims as outlined in the following chapter.

- B. NPFC Case Officer/Case Team. OSCs are encouraged to contact the NPFC Case Officer for advice and assistance whenever questions on these investigative requirements arise.

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CHAPTER 3 DESIGNATION OF SOURCE AND NOTIFICATION OF RP

A. General Procedures.

1. Federal On-Scene Coordinators (and State On-Scene Coordinators using the OSLTF under OPA State Access).
 - a. Conduct investigations, to the extent practicable, to identify the source of the discharge or substantial threat of discharge. FOSCs should promptly determine the source of the oil pollution, and where it involves a vessel or a facility, identify any potential RPs to ascertain their present intentions with respect to removing the oil or the threat of its discharge. In doing so, they should attempt to fully identify the potential RPs: names, addresses, telephone/telex/fax numbers, resident agents or agents for service of process, those authorized to speak and act for the RP in this situation (particularly where the RP is an organization) and how they can be contacted, their tax ID number, and information concerning RP organizational structures which could assist in this endeavor.
 - b. Assess possibility for OPA claims. The OSC must determine whether third party claims for removal costs or damages due to the incident are possible. Criteria for determining the possibility of claims are listed in section *D Criteria for Evaluating Possibility of Claims* below. When the possibility of claims is unknown, the OSC should request that the NPFC issue a Notice of Designation. The NPFC should be advised of the potential for claims and provided with all identification information in every case.
 - c. Advise/work with NPFC. If claims are reasonably possible due to the incident, the OSC must notify the NPFC either by phone or message of the identity of the source vessel or facility and the responsible party(ies). The notification must include the address and contact information for the responsible party(ies). The OSC must work with the NPFC case officer to select the appropriate means of advertising or direct notifications to reach potentially injured parties.
2. NPFC Case Team.
 - a. Assess. The NPFC Case Team will also assess the possibility of claims based on their experience with similar incidents. If they determine that designation is appropriate, they may contact the OSC and request that the OSC provide source and responsible party information. Again, the OSC should advise the NPFC of the potential for claims and provided with all identification information in every case.
 - b. Make Designation. The NPFC claims manager shall arrange for the formal designation and notification to the responsible parties and guarantors, if known. In those rare situations which require immediate or expedited designation, the OSC may make the formal designation and notification to the local representative of responsible party, but the OSC should coordinate that designation with the NPFC case officer. The FOSC's immediate concerns, however, will normally be better served with the use of administrative orders, thus leaving the formal notice of designation to the NPFC.

- c. Accept denial/advertising. The designation should advise the responsible party that any denial must be made in writing within 5 days of receipt to the NPFC Claims Manager as indicated in the designation letter. If the OSC elects to receive the RP's denial, the OSC must then establish a process to ensure that any denial is received within the required time and that the NPFC Case Team is notified.
 - d. Monitor/Advertise for Fund or RP. The RP's failure to advertise as required is considered a denial of the designation and the NPFC will generally advertise on behalf of the Fund. If the RP fails to advertise as required, the NPFC may advertise on the RP's behalf.
3. Coast Guard On-Scene Coordinators.
- a. Under unusual circumstances, such as high level of visibility or public concern, the Coast Guard OSC may designate the source and notify the responsible parties.
 - b. The actions should, to the extent possible, be coordinated with the NPFC to allow the NPFC to notify any guarantors, establish advertising requirements, and track the responsible parties actions.
 - c. The OSC shall as soon as possible notify the NPFC Case Team of the designation and provide copies of the notification documents.
 - d. OSCs are encouraged to contact the NPFC Case Team for advice and assistance as necessary. Typically, initial contact is with the case officer.

B. Contents of notifying letter:

- 1. The name and other unique identifying information of the vessel or facility designated as the source.
- 2. The location, date, and time of the incident.
- 3. The specific body(ies) of water affected or threatened.
- 4. Procedures to deny designation and requirement to deny in writing within 5 days after receipt of notification.
- 5. The name, address, phone and fax numbers of the federal official to be contacted for additional information or denial of designation.
- 6. Requirements for advertising for claims (or information that the NPFC will establish requirements for advertising through separate correspondence when the Coast Guard OSC issues the notification) as outlined in chapter 4 including that the NPFC will advertise on behalf of the RP if the RP fails to deny the designation and then does not comply with the advertising requirements.
- 7. The date of the designation and the date that the notification was issued.

C. Categories of costs or damages which may be the subject of claims under OPA.

1. OPA section 1002 (b), 33 USC 2702 (b), describes covered removal costs and damages.

"COVERED REMOVAL COSTS AND DAMAGES. —

(1) REMOVAL COSTS. — The removal costs referred to in subsection (a) are —

- (A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (1) of section 311 of the Federal Water Pollution Control Act (33 U. S. C. 1321), as amended by this Act, under the Intervention on the High Seas Act (33 U. S. C. 1471 et seq.), or under State law; and
- (B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) DAMAGES. — The damages referred to in subsection (a) are the following:

- (A) NATURAL RESOURCES. — Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.
- (B) REAL OR PERSONAL PROPERTY. — Damages for injury to, or economic losses resulting from destruction of, real or personal property. which shall be recoverable by a claimant who owns or leases that property.
- (C) SUBSISTENCE USE. — Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.
- (D) REVENUES. — Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.
- (E) PROFITS AND EARNING CAPACITY. — Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.
- (F) PUBLIC SERVICES. — Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State."

2. OPA section 1001, 33 USC 2701, defines "removal", "removal costs", "damages", and "natural resources" as follows:

"remove" or "removal" means containment or removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

"removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

"damages" means damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages;

"natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

D. Criteria for evaluating possibilities of claims:

1. Removal costs (consistent with the NCP and under normal circumstances coordinated with the FOSC) may be the subject of OPA claims when incurred by:
 - a. State or local agencies responded to the spill.
 - b. Indian tribe responded to the spill.
 - c. Federal agencies responded to the spill.
Note that the FOSC should consider use of Pollution Removal Funding Authorizations (PRFAs) when other federal, state, or local agencies are conducting removal actions under the direction of the FOSC. Use of PRFAs establishes the scope of work and assures funding, and thus is preferred over the claims process. See the NPFC TOPs on Resource Documentation for PRFA procedures.
 - d. Other persons conducted removal actions.
 - f. The FOSC should determine the nature, amount, and location of the discharged oil; the probable direction of travel of the oil; and whether or not the spill was contained in determining **if other entities may incur removal costs** to remove oil from water, shorelines, or property.
2. Damages may be anticipated as a result of an oil spill depending on:
 - a. Magnitude of the spill.
 - b. Area of the spill and impact on:
 - (1) Environmentally sensitive areas - obtain preliminary evaluation by Scientific Support Coordinator and/or cognizant federal, state, or Indian tribe trustee.

- (2) Real or personal property - check impact on boats, docks, nets, beach, shoreline, marinas, etc.
 - (3) Areas of potential subsistence use - query local Fish and Wildlife or cognizant state representatives.
 - (4) Business or property generating governmental revenues - check with state or local officials concerning tax, royalty, or fee assessments.
 - (5) Business or private enterprise causing change in income or profits - check if the clean up prevents access to commercial enterprise, closes areas used for transit of watercraft or closes bridges affecting vehicle traffic, affects use of beaches, or damages inventory of waterside businesses such as hatcheries. (Note alternative income or profits available as a result of the incident or reasonable under the situation since claimants are required to mitigate damages.)
 - (6) Activities of state and local representatives in providing increased or additional services in connection with the incident such as security, traffic control, evacuations, arranging access.
- c. Consider the type of oil spilled, length of time in one area, and the concentration.
 - d. Consider the type of natural resource potentially affected. Again, seek advice from the Scientific Support Coordinator, and/or cognizant federal, state, or Indian tribe trustee.
 - e. Consider the effectiveness, or anticipated effectiveness, of the removal activities, including how much of the oil was contained, whether all the oil can be removed, etc.

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CHAPTER 4 ADVERTISING REQUIREMENTS

- A. General. It is not necessary to require public advertising in every Notice of Designation. Use of the OSLTF by the OSC gives rise to a potential claim against the RP for federal removal costs, and the Notice of Designation also serves to make the RPs aware of this liability under OPA. When required, however, the advertising should be designed to reach as many potential claimants as possible.
- B. Forms of Advertising. The forms of advertisement are specified in 33 CFR 136.311 and include the following:
1. Paid advertisements in newspapers having general circulation which encompasses the spill area.
 2. Posting notices at marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the specific area.
 3. Direct mailing of notices to known individual claimants or categories of potential claimants, e.g., towboats which may have been delayed by a waterway closing.
 4. News releases or paid announcements on radio or television broadcasts serving the general area.
 5. Other advertising methods as specified by the NPFC.
- C. Content of Advertising. The content of advertisements is specified in 33 CFR 136.313. Each advertisement or notification is to contain the following information or to indicate where this information may be obtained:
1. Location, date and time of the incident.
 2. Geographical area affected.
 3. Quantity/type of oil involved (when pertinent).
 4. Name or other description of the designated source.
 5. Name of the responsible party (the person to whom the Notice of Designation is addressed unless otherwise stipulated).
 6. Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.
 7. The procedures by which a claim may be presented, including a statement that indicates that a claimant may present a claim for interim, short-term damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.
 8. Notification that if the RP you denies or does not resolve a claim within 90 days after the date it is properly presented, the claimant may then submit the claim to the National

Pollution Funds Center (ca), claims division, 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, for consideration for payment from the Oil Spill Liability Trust Fund.

9. Unless specifically authorized by the NPFC, the advertisement/notification must be in English.

D. General Claims Processing Requirements.

1. The content of claims presented to the RP should also comply with the OPA claims regulations in 33 CFR part 136 and be as complete as possible. The RP must have the opportunity to pay the claim. If claimant pass only cursory invoices/claims to the RP and then submit well documented claims to the NPFC, the intent of OPA will be circumvented.
2. If claimants come to the Fund after making a proper prior presentment to the RP, they must provide the Fund with a copy of their claim presented to the RP and any other correspondence between the claimant and the RP concerning the claim. Normally, the NPFC's adjudication of the claim will not consider materials which were not presented to the RP, except obvious omissions which will perfect the claim. If new materials are included, claimants should also provide the RPs with copies and so state in their claims application (as they should with any correspondence with the NPFC regarding the claim). Copies of all correspondence between the NPFC and a claimant or the RP regarding a claim should be provided by the sender to the other interested party (i.e., the claimant or the RP) at the same time.

1. SAMPLE NPFC NOTICE OF DESIGNATION WITH ADVERTISING

U.S. Department
of Transportation

United States Coast Guard
Director, National Pollution Funds Center
4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (cm)
Phone: (202) 493-6832

5890
07/30/97

Certified Mail Return Receipt Requested
Number: Certified

Mailed

Company Name:
Company Address:

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number _____

Dear Sir:

On [date of incident], your vessel/facility the [name vessel or identify location of facility] discharged oil into the Mississippi River, a navigable water of the United States. The Oil Pollution Act of 1990, 33 USC 2701 et. seq., requires that we formally designate the [name of vessel or facility] as the source of the discharge and notify you that as its owner, you incur certain legal responsibilities to the U.S. Government and others damaged by this incident. You are liable for removal costs and damages as specified in 33 USC 2702 and must advertise the procedures by which persons who have claims for removal costs and damages may submit their claims to you, as specified in 33 USC 2714.

You must publicly advertise this designation and the procedures by which claims may be presented to you. The advertisement must begin within 15 days of the date of this letter and must continue for no less than 30 days. Enclosure (1) outlines the required content of this advertisement and enclosure (2) is a sample advertisement. You may choose to follow this sample but are not required to do so as long as your advertisement contains the required information. Your advertisement must be disseminated in such a manner that all potential claimants are notified. To accomplish this, we require that you advertise in a newspaper having general circulation in the area(s) affected. We also require that you post notices in marinas affected and provide direct notification to individuals have been identified as receiving damages from your spill. You may propose other methods of advertisement and notification, but they may be used only when approved in advance by the National Pollution Funds Center. Please note that a claimant may present a claim for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled.

Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

You are directed to inform us of the specifics of your advertising, including the name of any newspaper or other publication in which the advertisement is run, the geographical area covered by the publication, and how often the advertisement will appear, as appropriate. Send us copies of the advertisement and advise us in writing that you have begun advertising within 20 days of receipt of this letter, otherwise we will assume that you did not comply with these requirements. If you do not comply with these requirements, the National Pollution Funds Center will advertise for claims. If we advertise, you will be charged for our costs, as well as for the costs of any administration, adjudication and payment of claims.

You may deny this designation within 5 days of receipt of this Notice of Designation. Your denial must be in writing, identify this Notice of Designation, give the reasons for the denial, include a copy of all supporting documents, and must be submitted to [claims manager's name], Claims Manager, at the above address. If you deny this designation, the National Pollution Funds Center will advertise for claims. If we advertise and you are later judged to be responsible for the discharge, you will be charged for our costs, as well as for the costs of any administration, adjudication and payment of claims.

You may contact the Claims Manager, [name] at (202) 493-6____ or (800) 280-7118 if you have any questions. The FAX number is (202) 493-6896.

Sincerely,

_____ [Claims Manager Name]
U.S. Coast Guard
Claims Manager

Encl: (1) Content of Advertisement
(2) Sample Advertisement

Copy: NPFC (cm)
[FOSC]
[Other RPs]
[Guarantors]

Encl: (2) Content of Advertisement

Each advertisement/notification is to contain the following information or to indicate where this information may be contained:

1. Location, date and time of the incident.
2. Geographical area affected.
3. Quantity of oil involved.
4. Name or other description of the designated source.
5. Name of the responsible party (you).
6. Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.
7. The procedures by which a claim may be presented, including a statement that indicates that claimant may present a claim for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.
8. Notification that if you deny or do not resolve a claim within 90 days after the date of submission, the claimant may then submit the claim to the National Pollution Funds Center (ca), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, for our consideration. We will then evaluate the claim and take appropriate action.
9. Unless noted below, the advertisement/notification must be in English.

Encl: (2) Sample Advertisement

PUBLIC NOTICE

In accordance with the Oil Pollution Act of 1990 (33 USC 2714(c)), the [name of vessel of facility] has been named as the source of a discharge of oil into the [name of navigable water] on or about [date of incident]. This spill impacted [describe area impacted] and the owner of the [your name] is accepting claims for certain uncompensated damages and removal costs.

Removal costs and damages which may be compensated include: removal costs; damage to natural resources; damage to or loss of real or personal property; loss of subsistence use of natural resources; loss of government revenues; loss of profits and earnings capacity; and increased cost of public services.

Claims should be in writing, signed by the claimant, for a specified amount; and should include all evidence to support the damages. Claims presented may include claims for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. It should be noted that payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claims. Claims should be mailed to the following address:

[Address to which claims should be sent]

Office hours are from 9:00 AM to 5:00 PM ET, Monday through Friday, except holidays. Claimants may call [Telephone number for claims] for information.

Any claims which are denied or which are not resolved within 90 days after the date of submission to our claims representative may be submitted to the National Pollution Funds Center (ca), 4200 Wilson Blvd., Suite 1000, Arlington, VA 22203-1804 for consideration.

2. **SAMPLE COAST GUARD OSC NOTICE OF DESIGNATION**

5890

[date]

Certified Mail Return Receipt Requested Number:

RP Name

RP Address

RP City, State, Zip Code

Subject: NOTICE OF DESIGNATION

Re: Federal Project Number [FPN]

This is formal Notice of Designation under the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq. On [date of incident], the [source] [discharged/posed a substantial threat of a discharge of] oil [into/to] the [body of water]. You have been identified as the (owner/operator/licensee/lessee/permittee/holder) of the [vessel/facility] that has been designated as the source of the [discharge/substantial threat of a discharge].

As such, you are considered an OPA responsible party, and 33 USC 2714 requires that you be notified of this designation.

You should accept or deny this designation within 5 days of receipt of this Notice. Any denial must be in writing, referencing this Notice of Designation, and be sent to the [above address] [the FOSC's/NPFC's address]. The denial should also include any reasons for the denial and copies of any supporting documentation.

Under OPA, responsible parties have a duty to handle the removal of their discharges or their threats and are liable for costs and damages, as specified in 33 USC 2702 and 2715, and interest thereon. As the Federal On-Scene Coordinator, I have presently obtained funding in the amount of [current ceiling] to conduct the cleanup; this amount may increase as removal operations continue.

[SELECT ONE OF THE FOLLOWING TWO PARAGRAPHS]

I am unaware at this time of any other potential liability. However, if you do not deny this designation and the National Pollution Funds Center (NPFC) should later determine that third-party claims are possible, they will require that you advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

[OR]

In addition to federal removal costs, there is also a likelihood of third-party claims arising out this incident. If you do not deny this designation, you are required to advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

5890
[date]

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

The advertisement must begin within 15 days of the date of this designation and must continue for no less than 30 days. Enclosure (1) outlines the required content of the advertisement, and enclosure (2) is a sample advertisement. You may choose to follow the sample or craft your own as long as your advertisement contains the required information. The advertisement must be disseminated in a manner that is likely to ensure that all potential claimants are notified. To accomplish this, the NPFC normally requires at a minimum that the advertisement be run in newspapers having general circulation in the areas affected, that notices be posted at affected marinas or public facilities, and that direct notification be given to those individuals who have been identified as receiving damages from the spill. other methods of advertisement may be used with prior permission from the NPFC.

When you advertise, you must inform the NPFC of the specifics (including the names of the newspaper or other publications in which the advertisement was run, the geographical areas covered by the publications, how often the advertisement will appear, etc.) as necessary to demonstrate that potential claimants are likely to receive notification. Copies of the advertisements are to be provided to the NPFC within 20 days of receipt of this letter, or the NPFC will assume that you are not advertising. At that point, the NPFC will advertise for claims, and the costs for such advertising, as well as any other costs with handling and paying claims, are chargeable to you. The same is true if you deny designation and are still found to be a guarantor.

You may contact me at [the above] [address and phone/fax numbers]. You may contact the NPFC by writing to the Director (ca), USCG National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, Virginia, 22203-1804, or by phone number at (202) 493- the claims manager's extension]] or by fax at (202) 493-6937, if you have any questions.

Sincerely,

[name of Coast Guard OSC]
[title]

[INCLUDE IF ADVERTISING REQUIRED]

Encl.: (1) Content of Advertisements
(2) Sample Advertisements

[SEE NPFC DESIGNATION LETTER W/ADVERTISEMENTS FOR ENCLOSURES]

Copy: NPFC, other Rps, Guarantors

3. **SAMPLE NPFC NOTICE OF DESIGNATION WITHOUT ADVERTISING**

5890
[date]

Certified Mail Return Receipt Requested Number:

RP Name
RP Address
RP City, State, Zip Code

NOTICE OF DESIGNATION
Re: Federal Project Number XXXXXX

This is formal **Notice of Designation** under the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq. On [date of incident], the [source] [discharged/posed a substantial threat of a discharge of] oil [into/to] the [body of water].

You have been identified as the [owner/operator/licensee/lessee/permittee/holder] of the [vessel/facility] that has been designated as the source of the [discharge/substantial threat of a discharge]. As such, you are considered an OPA responsible party, and 33 USC 2714 requires that you be notified of this designation.

You should accept or deny this designation within 5 days of receipt of this Notice. Any **denial must be in writing**, referencing this Notice of Designation, and be sent to the above address. The denial should also include any reasons for the denial and copies of any supporting documentation.

Under OPA, responsible parties have a duty to handle the removal of their discharges or their threats and are liable for costs and damages, as specified in 33 USC 2702 and 2715, and interest thereon. If you are not already doing so, you should cooperate fully with the Federal On-Scene Coordinator in carrying out removal activities.

The Federal On-Scene Coordinator has presently obtained funding in the amount of [current ceiling] to conduct the cleanup; this amount may increase as removal operations continue. We are unaware at this time of any other potential liability. However, if you do not deny this designation and we should later determine that third-party claims are possible, we will require that you advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

5890
[date]

NOTICE OF DESIGNATION
Re: Federal Project Number XXXXXX

I have enclosed additional material concerning OPA for your information. You may contact me at the above address and phone number or at fax number (202) 493-6896, if you have any questions.

Sincerely,

[signature]

Encl.: (1) OPA Title I
(2) 33 CFR part 136

Copy: FOOSC, other RPs, Guarantors

4. SAMPLE NPFC NOTICE TO GUARANTOR

5890
06/06/95

Certified Mail Return Receipt Requested Number:

Name
Address
City, State ZIP

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

On [date of incident] the [name of vessel/facility] [discharged oil into the / ran aground and created a substantial threat of a discharge of oil in] [body of water], a navigable water of the United States. The Oil Pollution Act of 1990, 33 USC 2701, requires that we formally designate the [name of vessel/facility] as the source of the discharge. You are on record as the insurer of this vessel under insurance certificate No. [insurance #], which you issued in accordance with section 311 of the Clean Water Act, and corresponding Certificate of Financial Responsibility No. [COFR #], expiring, [expiration date]. This letter notifies you of this designation. The procedures which the owner and operator must follow are described in the attached letters to the owner and operator.

You may contact the Claims Manager, [Claims Manager] at [Telephone #] if you have any questions. The FAX number is [Fax #].

Sincerely,

[claims manager's name] [title]

Encl. (1) Notice of Designation
 (2) Letter to [RP name]

CC: NPFC

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